



February 2016

NATIONAL MEDIATION BOARD

Progress Made on
Some GAO
Recommendations to
Strengthen
Operations, but Key
Controls Continue to
Be Needed

Accessible Version

GAO Highlights

Highlights of [GAO-16-240](#), a report to congressional committees

Why GAO Did This Study

NMB was established under the Railway Labor Act to facilitate labor relations for railroads and airlines by mediating and arbitrating labor disputes and overseeing union elections. The FAA Modernization and Reform Act of 2012 included a provision for GAO to evaluate NMB programs and activities every 2 years. GAO's first report under this provision, issued in December 2013, included seven recommendations for NMB based on assessments of policies and processes in several management and program areas.

This second report examines the extent to which NMB has 1) implemented recommendations made by GAO in December 2013, and 2) incorporated key procurement practices. GAO reviewed relevant federal laws, regulations, and NMB documents, such as its strategic and workforce plans; and contracting data for fiscal years 2014-2015; and interviewed NMB officials.

What GAO Recommends

GAO recommends that NMB develop and implement written policies and processes to reflect its current procurement environment. NMB agreed with the recommendation and indicated it would take steps to implement it.

View [GAO-16-240](#). For more information, contact Cindy Brown Barnes at 202-512-7215 or brownbarnesc@gao.gov

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NATIONAL MEDIATION BOARD

Progress Made on Some GAO Recommendations to Strengthen Operations, but Key Controls Continue to Be Needed

What GAO Found

The National Mediation Board (NMB) has made some progress in addressing the seven recommendations GAO made in December 2013; however, additional actions are needed to fully implement those recommendations and strengthen operations (see table). Without full implementation, NMB lacks reasonable assurance that its limited resources are effectively targeted and may be missing opportunities to improve performance and mitigate risks in program and management areas.

NMB's Actions in Response to GAO's December 2013 Recommendations

GAO's 2013 recommendations	NMB's actions	Additional actions needed to address recommendations
Develop a formal strategic planning process	Published a strategic plan in fiscal year 2014.	Develop formal written policies and procedures governing its planning process.
Develop performance goals and measures	Developed new performance goals.	Ensure performance goals meet all guidelines for federal performance management.
Develop and implement formal mechanism to resolve audit findings/recommendations	Developed a written process to resolve financial statement audit findings and recommendations.	Expand the written process to address all audits.
Develop and fully implement an information security program	Moved to a cloud computing environment and outsourced certain functions.	Develop and implement policies and procedures and assess third-party providers' implementation of security requirements.
Establish an information privacy program	Designated an official responsible for privacy.	Assess impact on privacy and issue notices about personally identifiable information NMB uses and shares.
Develop a strategic workforce plan	Completed a plan that addressed most required elements.	Formally include stakeholders in planning process and evaluate workforce planning and other human capital efforts.
Collect and analyze rail grievance arbitration data	Collected data for some cases on types of grievances.	Collect data on all cases and analyze.

Source: GAO analysis of NMB documents and interviews with officials. | GAO-16-240

NMB is following some key procurement practices that GAO has identified in prior work. However, NMB has not developed and implemented written policies and processes—consistent with internal control standards and best practice—that reflect its new interagency agreement with the Department of the Treasury for the performance of certain procurement functions. Without this documentation NMB cannot ensure the use of consistent processes in its new procurement environment.

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Figure 1: Organization of the National Mediation Board

Abbreviations

DHS	Department of Homeland Security
FedRAMP	Federal Risk and Authorization Management Program
Fiscal Service	Department of the Treasury’s Bureau of the Fiscal Service
FISMA (2002)	Federal Information Security Management Act of 2002
FISMA (2014)	Federal Information Security Modernization Act of 2014
GPRA	Government Performance and Results Act of 1993
GPRAMA	GPRA Modernization Act of 2010
NMB	National Mediation Board
NRAB	National Railroad Adjustment Board
OMB	Office of Management and Budget

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OPM
RLA

Office of Personnel Management
Railway Labor Act



February 12, 2016

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter A. DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The National Mediation Board (NMB), created by a 1934 amendment to the Railway Labor Act (RLA), oversees union elections and provides mediation, arbitration, and other services to resolve railroad and airline labor disputes, including resolving disputes over issues such as working conditions, rates of pay, and union representation.¹ Currently, NMB delivers services to management and labor unions at 150 commercial airlines and over 500 railroads. NMB has 51 full-time staff positions and had a fiscal year 2015 appropriation of approximately \$13 million.

¹The RLA was enacted in 1926 to provide a framework for ensuring harmonious railroad labor relations, and amended in 1936 to also cover the airline industry. It establishes several key principles, including the requirement to "exert every reasonable effort" to settle disputes to avoid interruption to commerce or to the operation of any railroad or airline, and procedures for resolving disputes over pay, rules, or working conditions during collective bargaining, as well as disputes resulting from the interpretation or application of existing collective bargaining agreements. 45 U.S.C. §§ 152, First, Sixth, 153 and 155.

The FAA Modernization and Reform Act of 2012 further amended the RLA and included a provision for us to evaluate and audit the programs, operations, and activities of NMB every 2 years.² We issued our first report in December 2013, which reviewed agency planning and controls related to several management and program areas and included seven recommendations to address deficiencies in these areas (see table 1).³

Table 1: GAO’s December 2013 Report Recommendations to the National Mediation Board (NMB)

Management/Program Areas	Recommendation
Strategic planning	Develop a formal strategic planning process to fully implement key required elements of strategic planning, including a formal process to obtain congressional and stakeholder input.
Performance management	Develop, and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.
Auditor findings and recommendations	Develop and implement a formal mechanism to ensure the prompt resolution of findings and recommendations by independent auditors, including clearly assigning responsibility for this follow-up to agency management.
Information security	Develop and fully implement key components of an information security program in accordance with the Federal Information Security Management Act of 2002.
Information privacy	Establish a privacy program that includes conducting privacy impact assessments and issuing system of record notices for systems that contain personally identifiable information.
Workforce planning	Develop a strategic workforce plan that (1) involves input from top management, employees, and other stakeholders; (2) identifies critical skills and competencies needed by NMB; (3) identifies strategies, such as training, to address any gaps; and (4) provides for cost-effective evaluations of these strategic workforce planning efforts. This plan should also address succession for the significant proportion of NMB staff and senior managers who are eligible to retire in the next few years.
Rail grievance arbitration	In order to better inform its decisions about managing the rail grievance arbitration process, including addressing the backlog of cases, NMB should collect and analyze data on the types of grievances filed, and their disposition. NMB should use these data to improve the efficiency of the arbitration process and consider, as part of this effort, whether to establish fees for arbitration services. If NMB determines that the establishment of fees would improve the efficiency of the arbitration process, it should impose such fees or seek legislative authority to do so, as necessary.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report we also found that NMB did not follow procurement policies and procedures it had in place at that time. The

²Pub. L. No. 112-95, § 1004, 126 Stat. 11, 147.

³GAO, *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, [GAO-14-5](#) (Washington, D.C.: Dec. 3, 2013).

agency developed a checklist for taking the required steps in the procurement process that responded to those findings prior to the issuance of the 2013 report. We did not, therefore, make any recommendations in that area at that time.

In addition, we found that the Office of Management and Budget (OMB) and Office of Personnel Management (OPM) provided limited budgetary and human capital oversight of NMB, the agency did not have mechanisms to monitor its operations and programs, and independent auditors' findings were not being addressed. As a result, we suggested that Congress consider authorizing an appropriate federal agency's Office of Inspector General to provide independent audit and investigative oversight of NMB.

This is the second review of NMB and this report examines the extent to which NMB:

1. has implemented each of our December 2013 recommendations, and
2. has incorporated key procurement practices.

To address our objectives, we reviewed relevant federal laws and regulations. We also assessed NMB documents related to strategic planning, performance management, information security, information privacy, workforce planning, and procurement using Standards for Internal Control in the Federal Government,⁴ provisions of the Federal Information Security Modernization Act (FISMA) of 2014,⁵ Privacy Act of 1974, E-Government Act of 2002, the Government Performance and Results Act of 1993 as updated by the GPRA Modernization Act of 2010 (GPRAMA), guidance developed by OMB and in the National Institute of Standards and Technology Special Publication 800-53 Revision 4, as well

⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

⁵Information security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002). FISMA 2002 was largely superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014) that incorporates and continues the requirements of FISMA 2002 applicable to NMB.

as criteria on strategic workforce planning⁶ and best practices in procurement developed by GAO in prior work.⁷

We analyzed NMB's contract actions for fiscal years 2014 and 2015 using data provided by the Department of the Treasury's Bureau of the Fiscal Service.⁸ We assessed the reliability of these data and information from NMB's fiscal year 2013 through 2015 financial statement audit reports⁹ by interviewing knowledgeable officials and reviewing relevant documents. We determined that these data were sufficiently reliable for our purposes.

We interviewed NMB officials and current board members. We also interviewed key stakeholders who were interviewed for the December 2013 report, including representatives from rail and air management and labor groups. The results of these interviews are not generalizable to all NMB stakeholders.¹⁰ Further, we interviewed officials at OMB and OPM to determine how these agencies provide oversight and guidance to NMB. For additional details, see appendix I.

We conducted this performance audit from April 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

⁶We used key principles for effective strategic workforce planning to assess NMB's October 2014 Workforce and Succession Plan. See GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003). We originally developed these criteria as part of a body of work examining issues in strategic human capital management.

⁷To assess NMB's procurement function, we used best practices for acquisition developed in GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005). To develop this framework, we consulted with federal government and industry experts in the areas of human capital, information management, financial management, and acquisition practices and prior GAO work.

⁸For fiscal year 2015, we only looked at contract actions from October 1, 2014, through August 3, 2015, because that was the date the Bureau of the Fiscal Service responded to our data request.

⁹NMB routinely prepared comprehensive, agency-wide financial statements and contracted for independent audits of those financial statements. Allmond & Company, LLC, conducted NMB's fiscal year 2013 through 2015 annual financial statement audits. We reviewed the methodology used to conduct these audits and found them sufficient for our purposes, but did not independently assess the audit findings.

¹⁰Interviewees for our December 2013 report were identified by issue area experts within GAO and a literature review. See [GAO-14-5](#).

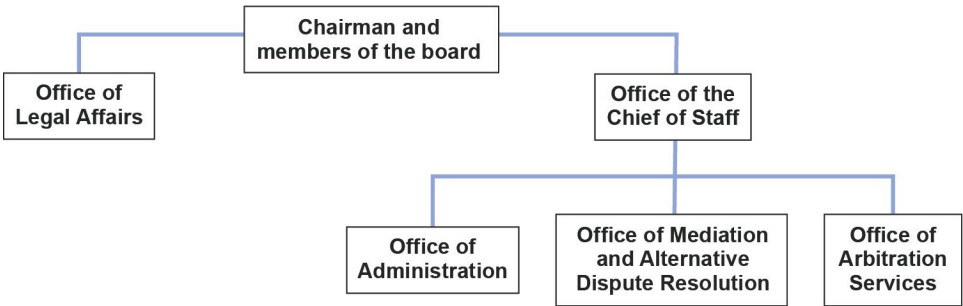
findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

NMB’s Organization and Mission

NMB is headed by a three-member board, with each member appointed by the President and confirmed by the Senate for a term of 3 years.¹¹ Day-to-day administration of the agency is provided by NMB’s General Counsel within the Office of Legal Affairs and the Chief of Staff (see fig. 1). NMB does not have an office of inspector general to provide independent audit and investigative oversight.

Figure 1: Organization of the National Mediation Board



Source: National Mediation Board (NMB). | GAO-16-240

According to NMB, its overall mission is to provide for the independence of air and rail carriers and employees in matters of self-organization, avoid interruption to commerce conducted through the operation of those carriers, and administer statutory adjustment boards as well as develop complementary strategies to resolve disputes. To fulfill its mission, NMB has three program areas:

¹¹45 U.S.C. § 154, First. No more than two members of the board can be from the same political party. The board members are required to designate a chairman annually. 45 U.S.C. § 154, Second.

-
- **Representation:** Unions are selected for the purposes of collective bargaining through secret-ballot elections conducted by NMB. If there is a question concerning representation of a specific craft or class,¹² NMB is charged with resolving the representation dispute through its Office of Legal Affairs, and has the sole jurisdiction to decide these disputes.¹³
 - **Mediation and Alternative Dispute Resolution:** The RLA provides mediation to help resolve disputes that can occur between management and labor during collective bargaining negotiations.¹⁴ When rail or air carriers and unions cannot reach agreement on the terms of a new or revised collective bargaining agreement—such as working conditions or rates of pay—either party can apply for NMB’s mediation services to resolve their differences or NMB may impose mediation if it finds that resolving the dispute is in the public’s interest. NMB also offers grievance mediation to parties as an alternative way to resolve disputes filed for grievance arbitration.
 - **Arbitration:** The RLA also offers grievance arbitration to help resolve disagreements between carriers and unions over how to interpret and apply provisions of existing collective bargaining agreements.¹⁵ For example, employees may file grievances if they believe they were wrongfully fired or disciplined in violation of the agreement. If the carrier and the employee cannot resolve the grievance, the RLA permits either of these parties to refer the dispute to arbitration before an adjustment board.¹⁶

¹²A craft or class consists of those employees who perform the same duties or functions at a given carrier, such as locomotive engineers or pilots.

¹³45 U.S.C. § 152, Ninth.

¹⁴45 U.S.C. § 155, First. In general, mediation is a process through which disputing parties, with assistance from a neutral third party (known as a mediator), seek ways to settle their dispute.

¹⁵45 U.S.C. § 153, First (i). Unless otherwise noted, in this report, when we refer to arbitration, we are referring to grievance arbitration.

¹⁶The arbitration of unresolved grievances in the rail industry takes place before either the National Railroad Adjustment Board, created by the RLA, or adjustment boards established by the parties (rail carriers and unions), known as Public Law Boards or Special Boards of Adjustment. 45 U.S.C. § 153, First (i), Second; 29 C.F.R. § 1207.1. These adjustment boards generally are made up of an equal number of carrier and union representatives. The RLA gave NMB the authority to create a National Air Transport Adjustment Board (45 U.S.C. § 185), but it has not done so. Instead, in the airline industry, parties jointly create their own temporary special boards of adjustment, called System Boards, through collective bargaining agreements.

The adjustment board consists of a carrier representative, a union representative, and a neutral arbitrator provided by NMB. In this capacity, the arbitrator is called upon to break a tie. NMB does not directly provide arbitration services, but rather maintains a list of registered arbitrators from which the parties can select someone to review and decide their case. In the airline industry, the parties pay the costs of arbitration. In the railroad industry, however, consistent with the requirements of the RLA, NMB pays the fee and travel expenses of the arbitrator.

NMB Has Made Progress, but Has Not Yet Fully Implemented GAO's 2013 Recommendations

NMB has made some progress in implementing each of the seven recommendations we made in December 2013.

Developing a Strategic Planning Process

GAO 2013 Recommendation: NMB should develop a formal strategic planning process to fully implement key required elements of strategic planning, including a formal process to obtain congressional and stakeholder input.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB lacked a formal strategic planning process and officials confirmed that they did not have a systematic mechanism for involving congressional and other stakeholders in this process. We concluded that without a robust process, NMB lacked assurance that its limited resources were effectively targeted toward its highest priorities.

In this review, we found that NMB has implemented a strategic planning process but has not formalized it through written policies and procedures. In fiscal year 2014, NMB developed and published a strategic plan covering fiscal years 2014 through 2019, which we determined was largely consistent with OMB guidance¹⁷ on implementing the GPRA

¹⁷OMB, *Strategic Plans, Annual Performance Plans, Performance Reviews, and Annual Program Performance Reports*, Circular No. A-11, Part 6 (Washington, D.C.: July 2013).

Modernization Act of 2010 (GPRAMA).¹⁸ NMB officials told us they used a strategic planning process soliciting input from staff in NMB program areas as well as from external stakeholders and Congress.¹⁹ Five of the seven external stakeholder groups that we interviewed said they commented on a draft of the strategic plan or discussed aspects of it during regular meetings with the agency, and all reported being satisfied with their overall communication with NMB.

However, the agency has not developed a written policy or set of procedures outlining its strategic planning process. Federal internal control standards call for agencies to document the policies and procedures necessary to achieve their objectives, including strategic planning.²⁰ Specifically, agencies should (1) establish policies and procedures to ensure that management directives are carried out and (2) appropriately document transactions and other significant events, and ensure that those records are properly managed, maintained, and available for examination. Further, through these policies and procedures, agency management can define responsibilities, assign key roles, and delegate authority.

Meeting these requirements may be particularly important for NMB. NMB officials said there was little need for preparing written documentation of the strategic planning process, such as a standard operating procedure, because it was simple and would be easy to replicate in the future.

¹⁸In 1993, Congress passed the Government Performance and Results Act (GPRA), which established strategic planning, performance planning, and performance reporting as a framework for agencies to communicate progress in achieving their missions. Pub. L. No. 103-62, 107 Stat. 285 (1993). The GPRA Modernization Act of 2010 (GPRAMA), enacted in 2011, established some important changes to existing requirements by placing a heightened emphasis on priority-setting, cross-organizational collaboration to achieve shared goals, and the use and analysis of goals and measurements to improve outcomes. GPRAMA enhanced agency-level planning and reporting requirements and required agencies to have additional leadership involvement and accountability. See Pub. L. No. 111-352, 124 Stat. 3866 (2011).

¹⁹Involving stakeholders is a key practice for strategic planning to (1) help agencies ensure that their efforts and resources are targeted at the highest priorities and (2) help create a basic understanding among the stakeholders of the competing demands that confront most agencies, the limited resources available to them, and how those demands and resources require careful and continuous balancing. Stakeholders for federal agencies include Congress, agency employees, and customers. See GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

²⁰[GAO/AIMD-00-21.3.1](#).

Officials also said, because the agency is small, with 51 full-time positions, its staff frequently communicate informally, limiting the need for written procedures. However, three of NMB's five senior managers, including the Chief of Staff and General Counsel, are eligible to retire, as are many other employees, increasing the risk of the agency losing institutional knowledge should they do so. Moreover, because the agency is small, some staff members have multiple responsibilities, increasing the magnitude of knowledge loss when an individual staff member leaves the agency.

Establishing Performance Goals and Measures

GAO 2013 Recommendation: NMB should develop, and include in its performance plan, performance goals and measures that contain required elements to demonstrate results.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB was not meeting OMB guidance to implement GPRAMA requirements for annual performance planning and reporting. Specifically, the agency's performance goals were not objective, quantifiable, and measurable—as required by GPRAMA²¹—and did not have targets and a time period over which to measure performance—as recommended by OMB guidance implementing GPRAMA.²² Without meeting this federal guidance, we concluded that the agency was not positioned to track and publicly report progress or results in its program areas.

In this review, we found that NMB has developed new performance goals. However, of the 19 goals in its fiscal year 2016 performance plan, one goal specified a target, another specified a timeframe; but none followed all elements of OMB guidance for implementing GPRAMA.²³ Several NMB officials told us that it is difficult for the agency to design performance goals because some outcomes are out of its control, such as how long it takes parties to reach agreement through mediation. Many federal agencies also set

²¹See 31 U.S.C. § 1115(b). These requirements originated in GPRA and were unchanged by GPRAMA.

²²Consistent with GPRAMA, OMB defines a performance goal as a statement of the level of performance to be accomplished within a time frame, expressed as a tangible, measurable objective or as a quantitative standard, value, or rate. For implementation of GPRAMA, OMB states that a performance goal includes a performance indicator, a target, and a time period. See OMB, *Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Performance Reports*, Circular No. A-11, Part 6 (July 2014).

²³We assessed NMB's performance goals, as reported in NMB's fiscal year 2016 performance plan, against OMB guidance implementing GPRAMA requirements. See OMB Circular No. A-11, Part 6 (July 2014). In its fiscal year 2016 performance plan, NMB included performance goals for its administration department as well as each of its program areas (Mediation and Alternative Dispute Resolution, Representation, and Arbitration). NMB did not include measures in its fiscal year 2016 performance plan.

measurable performance goals for outcomes that include external factors outside of their direct control. Our prior work has shown that there are a number of strategies that federal agencies can use to reduce the influence of external factors on agencies' measures.²⁴ OMB officials told us NMB could seek assistance from them to refine its performance goals or could partner with another agency that has a strong performance management department.

Resolving Auditor Findings and Recommendations

GAO 2013 Recommendation: NMB should develop and implement a formal mechanism to ensure the prompt resolution of findings and recommendations by independent auditors, including clearly assigning responsibility for this follow-up to agency management.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB was following most key practices for financial accountability and control, but had an outstanding significant deficiency from its fiscal year 2012 financial statement audit and did not have a mechanism for ensuring prompt resolution of audit findings.²⁵ As a result, we concluded that some recommendations made by auditors to improve the agency's internal controls or operations may not have been addressed.

In this review, we found that while NMB in fiscal year 2015 resolved the significant deficiency identified in its 2012 financial statement audit,²⁶ it does not have a formal mechanism to promptly resolve all audit findings consistent with federal internal control standards.²⁷ Specifically, while NMB

²⁴These strategies are (1) selecting a mix of outcome goals of which the agency has varying levels of control, (2) redefining the scope of a strategic goal to focus on a more narrow range of actual activities, (3) disaggregating goals for distinct target populations for which the agency has different expectations, and (4) using data on external factors to statistically adjust for their net effect on the desired outcome. See GAO, *Managing for Results: Measuring Program Results that Are Under Limited Federal Control*, [GAO/GGD-99-16](#) (Washington, D.C.: Dec. 11, 1998).

²⁵Under standards issued by the American Institute of Certified Public Accountants, a control deficiency exists when the design or operation of a control does not allow management or employees to prevent or detect misstatements on a timely basis. A *significant deficiency* is one that adversely affects an agency's ability to reliably initiate, authorize, record, process, or report financial data in accordance with generally accepted accounting principles. A *material weakness* is a significant deficiency, or combination of significant deficiencies, that could result in a material misstatement in financial statements. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

²⁶In fiscal years 2010 and 2011, NMB's financial auditor identified a material weakness related to the untimely recording of obligations related to NMB's arbitration services. In 2012, this issue was downgraded to a significant deficiency and remained so until the fiscal year 2015 audit.

²⁷Federal internal control standards state that agencies should ensure that the findings of audits and other reviews are promptly resolved. See [GAO/AIMD-00-21.3.1](#).

GAO 2013 Recommendations:

- Develop and fully implement key components of an information security program in accordance with the Federal Information Security

drafted a financial audit standard operating procedure in 2014, it does not cover the agency's response to findings from non-financial audits. The agency has also not addressed two recommendations made in previous auditors' management letters that accompanied NMB's financial audit reports.²⁸ One of those recommendations was made as a result of the fiscal year 2014 audit and the other recommendation was related to a discrepancy that has been unresolved since 1995.²⁹ In its fiscal year 2015 response, NMB indicated that the only management official with knowledge of the long-term discrepancy had retired and the agency would work to resolve the discrepancy through its financial management system.

Ensuring Information Security and Privacy

²⁸During NMB's financial statement audit, auditors noted certain matters involving internal control and NMB's operations that warranted management's attention. The auditors issued a management letter to NMB discussing all nonreportable conditions involving NMB's operations.

²⁹NMB's financial auditor noted that NMB was unaware of a positive balance in a United States Savings Bond deposit fund, which, as a result, was not reported in NMB's general ledger. Additionally, the auditor noted that because NMB did not have written procedures for performing monthly reconciliations, NMB was unable to determine to whom the funds belonged.

Management Act.

- Establish a privacy program that includes conducting privacy impact assessments and issuing system of records notices for systems that contain personally identifiable information.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB had not fully implemented key practices for information security and privacy. Without implementation of these key practices, we concluded that NMB had increased risks that the confidentiality, integrity, and availability of its information would be compromised and it had limited assurance that the personal information it collected and used was adequately protected.³⁰

In this review, we found that NMB has fully transitioned its network infrastructure and records management system into a cloud computing environment as a result of federal initiatives aimed at improving, among other things, the federal government's operational efficiencies and overall IT security posture.³¹ NMB also fully transitioned its financial systems to third-party service providers. Specifically, NMB relies on other agencies' systems, such as the Department of the Interior, for payroll, personnel, and human resources services, and the Department of the Treasury's Bureau of the Fiscal Service for a full range of accounting services, including hosting its financial management system.

In addition, NMB has begun to take steps to improve its information security program. Specifically, NMB developed a policy for managing agency information, documents, and records. The agency has also drafted procedures for its new enterprise network³² that include provisions for access and identity control, configuration management, planning, contingency monitoring, and audits. Further, it has developed a procedure for handling cyber incidents. Finally, it has an agreement in place with the Bureau of the Fiscal Service to, among other things, conduct a security assessment of its enterprise network.

³⁰The terms personal information and personally identifiable information are used interchangeably in this report to refer to any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, Social Security number, date and place of birth, mother's maiden name, or biometric records, and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

³¹During our initial review, NMB stated its previous in-house data center required changes in response to the president's Cloud First Directive and the Trusted Internet Connection and Data Center Consolidation initiatives.

³²According to NMB documents, NMB's Enterprise Cloud system supports the agency's mission by providing email, calendars, and records.

However, NMB has not fully implemented most key information security and privacy practices. (For additional details, see appendix II.) For example, the agency does not have policies and procedures in place for its information security program, including those for the oversight of third-party providers—entities that provide or manage information systems that support NMB operations. In addition, NMB has not conducted the required assessments of its third-party providers to ensure their systems are in compliance with the Federal Information Security Modernization Act (FISMA) of 2014.³³ FISMA requires federal agencies to develop, document, and implement an agency-wide information security program to protect the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

Moreover, NMB has not assessed whether its third-party providers' systems were in compliance with the Privacy Act of 1974 and E-Government Act of 2002, which describe, among other things, agency responsibilities with regard to protecting personally identifiable information.³⁴

NMB officials said the agency is taking steps to address its remaining information security and privacy issues. For example, because the agency's new enterprise network is now a cloud-based system, NMB plans to use the Federal Risk and Authorization Management Program (FedRAMP),³⁵ to the extent possible, to guide the development of its agency-wide policies and procedures, including how it will oversee its third-party providers and ensure they are in compliance with FISMA. In addition, NMB reached out to OMB in September 2015, and NMB officials said they have tried reaching out to the Department of Homeland Security (DHS) to ensure NMB is doing what is required to meet annual FISMA reporting

³³The Federal Information Security Modernization Act (FISMA) of 2014 was enacted as Pub. L. No. 113-283, 128 Stat. 3073 and amended chapter 35 of Title 44, U.S. Code. FISMA of 2014 largely supersedes the very similar FISMA 2002, expands the role and responsibilities of the Department of Homeland Security, and retains many of the requirements for federal agencies' information security programs previously set by the 2002 law. See Pub. L. No. 107-347, Title III, 116 Stat. 2899, 2946 (2002).

³⁴See 5 U.S.C. § 552a and Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2921.

³⁵FedRAMP is a U.S. government program that standardizes how FISMA applies to cloud computing services by providing a consistent approach to security assessment, authorization, and continuous monitoring for cloud products and services.

requirements.³⁶ NMB officials said they have been receiving information on FISMA from OMB, but not from DHS.³⁷

Further, NMB officials said they are working on drafting information security program and privacy policies and procedures. They said that finalizing the information security policies and procedures will assist the agency in completing all of its required reviews in the future.

Developing a Strategic Workforce Plan

GAO 2013 Recommendation: NMB should develop a strategic workforce plan that (1) involves input from top management, employees, and other stakeholders; (2) identifies critical skills and competencies needed by NMB; (3) identifies strategies, such as training, to address any gaps; and (4) provides for cost-effective evaluations of these strategic workforce planning efforts. This plan should also (5) address succession for the significant proportion of NMB staff and senior managers who are eligible to retire in the next few years.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB's human capital program was not guided by a strategic workforce plan. Without workforce planning, a key internal control,³⁸ we concluded that agency management could not ensure that skill needs would be continually assessed and that the agency would be able to obtain and maintain a workforce with the skills necessary to achieve organizational goals. Without a plan, the agency could not monitor and evaluate the results of its workforce planning efforts, including whether those efforts contributed to the agency accomplishing its strategic goals.³⁹

In this review, we found NMB in October 2014 completed a strategic workforce plan that at least partially addressed four of the five practices from our December 2013 recommendation (see table 2).⁴⁰

³⁶FISMA 2014, among other things, authorizes DHS to assist OMB with overseeing and monitoring agencies' implementation of security requirements.

³⁷We previously reported that small agencies, such as NMB, had not fully implemented requirements of an information security program and face challenges in using information security and privacy guidance and services provided by OMB and DHS. See GAO, *Information Security: Additional Oversight Needed to Improve Programs at Small Agencies*, [GAO-14-344](#) (Washington, D.C.: June 25, 2014).

³⁸[GAO/AIMD-00-21.3.1](#).

³⁹Periodic measurement of an agency's progress toward human capital goals and the extent that human capital activities contributed to achieving programmatic goals provides information for effective oversight by identifying performance shortfalls and appropriate corrective actions. See [GAO-04-39](#).

⁴⁰In this review we assessed the extent to which the agency had developed a plan that included the practices identified in our December 2013 report, but we did not independently assess NMB's implementation of the plan. In our December 2013 report, we also noted that OPM evaluated NMB's human capital program in 2007. See [GAO-14-5](#). According to OPM officials, they plan to perform an evaluation of NMB's human capital program in the second half of fiscal year 2016, but have not determined what subjects it will cover.

Table 2: Extent to Which the National Mediation Board (NMB) Is Following Key Practices Related to GAO’s December 2013 Workforce Planning Recommendation

Practice ^a	Extent NMB is following ^b	Examples of NMB’s Implementation
Develop a strategic workforce plan that involves input from top management, employees, and other stakeholders.	Partially following	NMB officials told us the agency developed its workforce plan through a collaborative, agency-wide process, but they did not formally solicit feedback from stakeholders on the plan and the plan did not specifically call for staff and stakeholder involvement. However, members of NMB’s advisory group said they provided input to NMB on workforce decisions such as training and the hiring of key staff.
Develop a strategic workforce plan that identifies critical skills and competencies needed by NMB.	Following	NMB identified critical skills and competencies in its workforce plan.
Develop a strategic workforce plan that identifies strategies, such as training, to address any gaps.	Following	NMB has programs in place to provide training for staff, and has identified several strategies for recruiting a diverse workforce.
Develop a strategic workforce plan that provides for cost-effective evaluations of these strategic workforce planning efforts.	Minimally Following	NMB’s workforce and succession plan did not address the monitoring and evaluation of its workforce planning efforts, and the performance goals in its strategic plan related to human capital do not meet all guidance.
Develop a strategic workforce plan that addresses succession for the significant proportion of NMB staff and senior managers who are eligible to retire in the next few years.	Following	NMB’s workforce and succession plan evaluated the risk of vacancy of each position and provided narrative on the expected identification of replacement staff.

Source: GAO analysis of NMB documents and interviews with NMB officials. | GAO-16-240

^aThese key practices were developed by GAO in GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003).

^bWe assessed whether NMB is following key practices (NMB is taking appropriate actions and has a formal plan, policy, or other document), partially following (is taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this practice implemented), or minimally following (NMB is taking little or no action to address this particular practice).

While members of one of NMB’s advisory groups said they provided input on some of the agency’s workforce decisions, our prior work suggests that formally including stakeholders in the workforce planning process can help the agency develop ways to streamline processes and improve human capital strategies.⁴¹ In addition, NMB’s performance goals, including those related to human capital, do not meet federal guidance. Without performance goals that meet guidance or the inclusion of other monitoring and evaluation efforts in its workforce and succession plan, the agency is

⁴¹[GAO-04-39](#).

not positioned to measure the outcomes of its human capital strategies or evaluate whether these strategies helped it accomplish its goals.

Managing Rail Grievance Arbitration

GAO 2013 Recommendation: In order to better inform its decisions about managing the rail grievance arbitration process, including addressing the backlog of cases, NMB should collect and analyze data on the types of grievances filed, and their disposition. NMB should use these data to improve the efficiency of the arbitration process and consider, as part of this effort, whether to establish fees for arbitration services. If NMB determines that the establishment of fees would improve the efficiency of the arbitration process, it should impose such fees or seek legislative authority to do so, as necessary.

Source: GAO-14-5 | GAO-16-240

In our December 2013 report, we found that NMB was struggling to efficiently manage grievance cases in the rail industry and it lacked data on the types of grievances filed to more efficiently manage the process. As a result, we concluded that if NMB did not address this demand on its limited resources, it could face a growing backlog of arbitration cases.

In this review, we found that NMB is collecting data on the type of grievances filed for arbitration in some, but not all cases. An NMB official said part of the reason the agency is not collecting complete data on grievance types is because it does not have access to all cases. NMB reviews all grievances filed for arbitration by either a railroad or union and then forwards them to one of three types of adjustment boards—the National Railroad Adjustment Board (NRAB), a Public Law Board, or a Special Board of Adjustment.⁴² NMB is able to track information on the type of grievances filed for arbitration by the Public Law Boards and Special Boards of Adjustment because NMB requires parties to code their grievance type when they file their request for these boards.⁴³ Parties filing grievances with NRAB, however, are not required by NMB to code their grievance type, an NMB official said, because NRAB is an independent organization that sets its own procedures and NMB cannot require that grievance codes be included in requests for arbitration filed with NRAB. However, NMB may be able to obtain that information because NRAB officials told us they track information on grievance type and are willing to share this information with NMB.

Even with data on types of grievances filed for all cases, it is not clear the extent to which NMB would analyze them to address the arbitration backlog. One program official said that NMB does not have a systematic way to identify cases that may be good candidates for some type of

⁴²45 U.S.C. § 153, First (i). The arbitration of unresolved grievances in the rail industry takes place before either the NRAB or adjustment boards established by the parties (rail carriers and unions), known as Public Law Boards or Special Boards of Adjustment. 45 U.S.C. § 153, First (i), Second; 29 C.F.R. § 1207.1. These adjustment boards are generally made up of an equal number of carrier and union representatives.

⁴³Grievance arbitration cases in the rail industry can involve a wide range of grievances, such as wrongful dismissals, unfair labor practices, and rights to additional pay.

alternative to arbitration, such as grievance mediation, because staff cannot easily access case information in a way that makes it readily available for analysis.⁴⁴ Analysis of these cases continues to be largely a manual process that takes significant staff resources, he said. According to an NMB information technologist, in the past, the agency has primarily relied on staff to sort and analyze these data. However, the agency's new arbitration case management system, which it upgraded in November 2015, should be able to produce by spring 2016 standard electronic data reports that would facilitate this analysis. Until those reports are available, it appears NMB will have limited ability to analyze data that might help it reduce its arbitration backlog, which, according to NMB, continues to grow.

NMB Has Not Established Procurement Policies and Processes That Reflect Its New Procurement Environment

NMB is following key procurement practices in 2 of 3 areas that our prior work on assessing the acquisition function at federal agencies identified as promoting agencies' efficient, effective, and accountable procurement functions—organizational alignment and leadership; and knowledge and information management.⁴⁵ NMB, however, has not developed policies and processes—a third area our prior work identified—that reflect its new procurement interagency agreement. After the retirement of its only contracting officer in January 2014, NMB entered into an interagency agreement with the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for provision of certain procurement functions that NMB had previously handled in-house.

In this new environment, NMB is continuing to align its procurement function with its mission and ensure adequate resources to meet its procurement needs, a key practice to facilitate efficient and effective management of acquisition activities. Its Office of Administration is at an organizational level comparable to other key mission offices, such as the Office of Mediation and Alternative Dispute Resolution and the Office of Arbitration. An NMB official told us that the agency also involves internal stakeholders in acquisition decisions, including determining procurement needs, reviewing existing contracts before automatically renewing them,

⁴⁴NMB offers grievance mediation to parties as an alternate way to resolve grievances that have been filed for arbitration. According to NMB, cases handled through grievance mediation do not contribute to the backlog of arbitration cases and greatly reduce the cost of grievance handling to both the parties and to NMB.

⁴⁵[GAO-05-218G](#).

and justifying purchase requests. In addition, the agency entered into the interagency agreement with the Fiscal Service in response to changes in its workforce (i.e., the retirement of its contracting officer). Further, to ensure NMB has a procurement workforce adequate to support the organization's needs, two staff are being trained as contracting officers because not having a contracting officer is a risk to the agency, the NMB official said.⁴⁶ In addition, six NMB staff were trained and certified as contracting officer representatives, who assist the contracting officer in providing administration of contract actions under the interagency agreement and evaluating performance.

NMB is also following a second key practice by establishing knowledge and information tools to help it make well-informed procurement decisions. NMB now has access to electronic data on purchase requests from the procurement and financial management systems administered by Fiscal Service. Fiscal Service also provides NMB with monthly billing reconciliations and weekly updates on the status of its contracts.⁴⁷ A NMB official said that the information received from Fiscal Service has helped the agency analyze and adjust its spending and, as a result, NMB has eliminated contracts for items it no longer needs, such as storage space, copiers, and periodical subscriptions.

However, NMB is not following an element of a third key practice—to have policies and processes in place consistent with internal control standards and best practice.⁴⁸ NMB has not developed written internal

⁴⁶Contracting officers are authorized to enter into, administer, and/or terminate contracts.

⁴⁷ Our work has shown that integrated tracking of contracting and financial data is needed to support management decision making and external reporting requirements. See [GAO-05-218G](#).

⁴⁸ According to federal internal control standards, control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives and they should be effective and efficient in accomplishing the agency's control objectives. For example, internal controls and all transactions and other significant events need to be clearly documented and such documentation should appear in management directives, administrative policies, or operating manuals. See [GAO/AIMD-00-21.3.1](#). Our work has shown that policies and processes embody the basic principles that govern the way an agency performs the procurement function. Key principles call for effective policies and processes to govern the planning, award, administration, and oversight of procurement efforts, with a focus on assuring that these efforts achieve intended results. Further, these policies and procedures are to be accompanied by controls and incentives to ensure they are translated into practice. See [GAO-05-218G](#).

policies and processes that reflect its new interagency agreement procurement environment. The NMB procurement official said the agency does not have current policies and processes because some of the previous policies and procedures were lost in the transition which occurred when the previous contracting officer retired. As a result, the agency has had to recreate them, the official said. The agency's fiscal year 2014 to 2019 strategic plan (as amended in fiscal year 2015) called for procurement processes to be updated by the end of fiscal year 2014 in light of the new procurement environment. Developing and implementing written procurement policies and processes that reflect NMB's current procurement environment could help ensure its staff use consistent processes under this new environment.

Conclusions

Since we made our recommendations in December 2013, NMB has taken several positive steps in response, such as developing strategic and workforce plans and closing a long-standing deficiency in a financial statement audit. However, additional actions are needed to fully respond to those recommendations. For example, NMB's performance goals do not yet meet all federal guidance. As a result, the agency is not positioned to track and publicly report progress or results in its program areas. In the areas of strategic planning and information security and privacy, officials were not able to provide the written policies and procedures that guide their actions, consistent with standards for internal control. Without fully implementing these recommendations, NMB cannot ensure that its limited resources are effectively targeted toward its highest priorities. Moreover, it may be missing opportunities to improve performance and mitigate risks in its program and management areas. In addition, NMB has not developed written policies and procedures that reflect its new procurement environment under its interagency agreement. Without written policies and processes—as called for by internal control standards and best practice—NMB cannot ensure the use of consistent procurement processes.

We continue to believe, as suggested in our December 2013 report, that Congress should consider authorizing an appropriate federal agency's Office of Inspector General to provide independent audit and investigative oversight of NMB.

Recommendations for Executive Action

We recommend that the Chairman of the National Mediation Board develop and implement written policies and processes to reflect the agency's current procurement environment.

Agency Comments and Our Evaluation

We provided a draft of this report to the National Mediation Board (NMB) for comment. The agency provided written comments, which are reproduced in their entirety in appendix III. We also shared a draft with the Office of Management and Budget (OMB) and Office of Personnel Management (OPM). Neither agency provided comments.

NMB commented that many of the areas we had concerns about are not under its direct control considering that NMB has entered into interagency agreements for certain services with the Department of the Interior and the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service). We continue to believe, however, that NMB must retain ultimate control and responsibility for all its programs and data, regardless of which agencies are to perform the services. For example, with regard to our findings related to information security, NMB commented that it will develop standard operating procedures for reviewing audits conducted by its third-party providers, but that it does not have the resources to conduct its own audits of those contracted agencies. Under FISMA, however, NMB is responsible for developing, documenting, and implementing a security program to protect its information systems and data, including those managed by another agency, contractor, or other source. We believe that developing procedures for reviewing audits conducted by third-party providers will be a positive step toward ensuring that NMB is conducting this required oversight.

NMB agreed with our recommendation to develop and implement policies and processes to reflect the agency's current procurement environment and indicated it is taking steps to do so. NMB also commented that because it does not manage all of its own procurements, its policies and processes would be largely subordinate to those of the Fiscal Service. However, because NMB's interagency agreement with the Fiscal Service for performance of certain procurement functions does not absolve NMB of its responsibility to develop policies and processes as called for by internal control standards and best practice, NMB must develop its own set of complementary policies and processes to ensure the agency meets its needs through efficient, effective, and accountable procurement functions.

In terms of its response to audits, NMB commented that all program audit findings have been addressed and that there are no outstanding issues related to any audits. While we recognized in the report that NMB resolved a long-standing, significant deficiency in its fiscal year 2015 financial statement audit, we disagree that all audit issues have been resolved. NMB needs to develop policies and procedures to address findings from all audits, not solely those reported in the financial statement audit report.

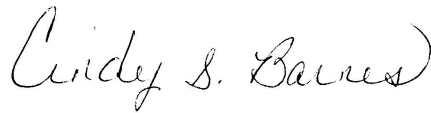
NMB also commented that some of our concerns appeared to be related to the agency's failure to sufficiently document its processes and that this was not necessarily an indication of noncompliance with any particular requirement. We agree that NMB has made strides in certain areas, such as developing strategic and workforce plans, but its actions are not in accordance with federal guidance or federal internal control standards in some areas. For example, in the areas of strategic planning, information security and privacy, and procurement, officials were not able to provide the written policies and procedures that guide their actions. We continue to believe it is important for NMB to create this documentation to ensure future consistency and success in its management and program areas.

Finally, NMB commented it had concerns that we continued to assert the agency did not adequately consult with its stakeholders even though we noted several times in the report that stakeholders told us they had input and were satisfied with their overall communication with the agency. Stakeholder groups did tell us they had good communication with NMB, particularly with regard to the agency's strategic planning. However, in the development of its workforce plan, NMB officials said that they did not specifically solicit stakeholder input, and the agency's workforce and succession plan does not address collecting and incorporating feedback from stakeholders. As our prior work suggests,⁴⁹ it will be important for NMB to formally include stakeholders in this process in the future because involving stakeholders can help the agency develop ways to streamline processes and improve human capital strategies.

⁴⁹[GAO-04-39](#).

We are sending copies of this report to the Chairman of NMB and appropriate congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownbarnesc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Cindy Brown Barnes
Director
Education, Workforce, and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

The FAA Modernization and Reform Act of 2012 included a provision for us to evaluate and audit the programs, operations, and activities of the National Mediation Board (NMB) every 2 years.¹ Our first report was issued in December 2013.² This is the second review of NMB and this report examines the extent to which NMB:

1. has implemented each of our December 2013 recommendations, and
2. has incorporated key procurement practices.

To address our research objectives, we reviewed key NMB documents and compared those documents with relevant federal laws, regulations, guidance, and related leading practices identified in our previous work (see table 3).

Table 3: GAO Comparison of Key National Mediation Board (NMB) Documents with Federal Laws, Guidance, and Leading Practices

Management area	NMB documents reviewed	Federal laws and guidance and previous GAO work
Strategic planning	NMB Strategic Plan, Fiscal Year 2014 through Fiscal Year 2019 (as amended in Fiscal Year 2015)	GPRA Modernization Act of 2010 (GPRAMA) ^a Office of Budget and Management (OMB) Circular No. A-11, Part 6 (2013) ^b Standards for Internal Control in the Federal Government ^c
Performance management	NMB Strategic Plan, Fiscal Year 2014 through Fiscal Year 2019 (as amended in Fiscal Year 2015) Fiscal Year 2016 Congressional Budget Submission	GPRAMA ^a OMB Circular No. A-11, Part 6 (2013 and 2014) ^{b, d} GAO prior work on performance measurement ^e
Resolution of audit findings and recommendations	Audit Standard Operating Procedure Fiscal Year 2013 Audit Report, Fiscal Year 2014 and 2015 Final Independent Auditors’ Reports, and associated management letters	Standards for Internal Control in the Federal Government ^c

¹Pub. L. No. 112-95, § 1004, 126 Stat. 11, 147.

²GAO, *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, [GAO-14-5](#) (Washington, D.C.: Dec. 3, 2013).

Appendix I: Objectives, Scope, and Methodology

Management area	NMB documents reviewed	Federal laws and guidance and previous GAO work
Information security and privacy	<p>Fiscal Year 2015 Interagency Agreement and Fiscal Year 2015 Service Level Agreement between NMB and Department of the Interior</p> <p>Fiscal Year 2015 and Fiscal Year 2016 Interagency Service Agreements between NMB and Department of the Treasury Bureau of the Fiscal Service</p> <p>NMB information, documents, and records management policy and proposed draft revised policy</p> <p>Enterprise Cloud Standard Operating Procedures</p> <p>NMB's 2014 Draft System Security Plan for Enterprise Cloud (version 1.2) – May 2014</p> <p>NMB Security Awareness Certificates</p> <p>Initial Internal Security Assessment for the NMB Enterprise Cloud – May 2014</p> <p>NMB Preliminary Plan of Actions and Milestones</p> <p>NMB Cyber Incident Reporting Standard Operating Procedure</p> <p>NMB Continuity of Operations Plan – June 2011</p>	<p>Federal Information Security Modernization Act of 2014^f</p> <p>Privacy Act of 1974</p> <p>E-Government Act of 2002</p> <p>National Institute of Standards and Technology Special Publication 800-53, Revision 4</p> <p>OMB Memos M-05-08 and M-15-01</p>
Workforce planning	<p>Workforce and Succession Plan - October 2014</p> <p>NMB Strategic Plan, Fiscal Year 2014 through Fiscal Year 2019 (as amended in Fiscal Year 2015)</p> <p>Fiscal Year 2016 Congressional Budget Submission</p>	<p>GAO prior work on workforce planning^g</p> <p>GPRAMA^a</p> <p>OMB Circular No. A-11, Part 6 (2013 and 2014)^{b, d}</p>
Procurement	<p>Fiscal Year 2015 and Fiscal Year 2016 Interagency Service Agreements between NMB and Department of the Treasury Bureau of the Fiscal Service</p> <p>Contract actions for Fiscal Year 2014 and Fiscal Year 2015^h</p>	<p>Standards for Internal Control in the Federal Government^c</p> <p>GAO prior work on procurement at federal agenciesⁱ</p>

Source: GAO | GAO-16-240

Notes:

^aGPRA stands for the Government Performance and Results Act, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

^bOffice of Management and Budget, Strategic Plans, Annual Performance Plans, Performance Reviews, and Annual Program Performance Reports, Circular No. A-11, Part 6 (July 2013).

^cGAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

^dOffice of Management and Budget, Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Performance Reports, Circular No. A-11, Part 6 (July 2014).

^eGAO, *Managing for Results: Measuring Program Results that Are Under Limited Federal Control*, [GAO/GGD-99-16](#) (Washington, D.C.: Dec. 11, 1998).

^fThe Federal Information Security Management Act of 2002 (FISMA 2002) established information security program and evaluation requirements for federal agencies. FISMA 2002 was largely

superseded by the Federal Information Security Modernization Act of 2014 (FISMA 2014) that incorporates and continues the requirements of FISMA 2002 applicable to NMB.

⁹GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec.11, 2003).

^hFor fiscal year 2015, we only looked at contract actions from October 1, 2014, through August 3, 2015, because that was the date the Bureau of the Fiscal Service responded to our data request..

ⁱGAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, [GAO-05-218G](#) (Washington, D.C.: September 2005).

We interviewed NMB officials and current board members. In addition, we interviewed key stakeholders who were interviewed for the December 2013 report, among others. Specifically, we interviewed representatives from key rail and air management and labor groups including Airlines for America, National Railway Labor Conference, AFL-CIO Transportation Trades Department and affiliated rail and air unions, and the International Brotherhood of Teamsters. Further, we interviewed representatives from the National Association of Railroad Referees, an association representing railroad arbitrators; the Dunlop II Committee, an informal NMB advisory group; and the National Railroad Adjustment Board, which hears rail grievance arbitration cases. The results of these interviews are not generalizable to all NMB stakeholders.³ Finally, we interviewed officials at the Office of Management and Budget and the Office of Personnel Management to determine how these agencies provide oversight and guidance to NMB.

In addition, we reviewed NMB procurement data. Specifically, we reviewed data provided by the Department of the Treasury's Bureau of the Fiscal Service on NMB's fiscal year 2014 and 2015 contract actions.⁴ We assessed the reliability of data from the Bureau of the Fiscal Service and NMB's fiscal year 2013 through 2015 financial statement audit reports⁵ by interviewing knowledgeable officials and reviewing relevant documents. We determined that these data were sufficiently reliable for our purposes.

³Interviewees for our December 2013 report were identified by issue area experts within GAO and a literature review. See [GAO-14-5](#).

⁴For fiscal year 2015, we only looked at contract actions from October 1, 2014, through August 3, 2015, because that was the date the Bureau of the Fiscal Service responded to our data request.

⁵NMB routinely prepared comprehensive, agency-wide financial statements and contracted for independent audits of those financial statements. Allmond & Company, LLC, conducted NMB's fiscal year 2013 through fiscal year 2015 annual financial statement audits. We reviewed the methodology used to conduct these audits, but did not independently assess the audit findings.

We conducted this performance audit from April 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Extent to Which the National Mediation Board (NMB) Is Following Key Practices for Information Security and Privacy

	Practice	Extent NMB is following ^a	Example of NMB's status
Information Security Practices^b	Periodic risk assessments	Minimally following	NMB has not conducted risk assessments of its new enterprise network and financial management systems.
	Risk-based policies and procedures	Partially following	NMB developed a policy for managing agency information, documents, and records in May 2013. In addition, it drafted procedures for its new enterprise network that include provisions for access and identity control, configuration management, planning, contingency monitoring, and audits. However, NMB has not developed agency-wide policies and procedures that govern its information security program, including policies and procedures for the oversight of third-party providers.
	System security plans	Partially following	NMB has drafted a security plan for its new enterprise network dated May 2014. However, NMB has not developed a security plan for its new financial management systems.
	Security awareness training	Minimally following	NMB stated its staff was provided security awareness training during 2015. However, NMB did not provide evidence to support that all employees and contractors had received the training.
	Periodic testing and evaluation at least annually	Partially following	NMB conducted an initial review of its new enterprise network in May 2014. NMB stated its new financial management systems were reviewed in September 2014. However, NMB was unable to provide evidence to support the review.
	Remedial action process	Partially following	NMB has not established and documented a remedial action process for its information security control weaknesses. NMB has not formally documented and tracked its preliminary plan of actions for its new enterprise network and has not included required attributes, such as milestones and scheduled completion dates. In addition, NMB has not yet begun formally documenting and tracking any information security control weaknesses which have been identified through other reviews (e.g., GAO).
	Security incident procedures	Partially following	NMB has developed a procedure for handling cyber incidents. However, there are no indicators of date, review and approval. In addition, the procedure does not include required actions, such as mitigating risks associated with incidents before substantial damage is done, and notifying and consulting with the federal information security incident center.
	Continuity of operations plans and procedures	Minimally following	NMB has not established and maintained up-to-date continuity of operations plans and procedures for its information systems. Specifically, its continuity of operations plan has not been updated since June 2011 and does not reflect the current information technology environment.
Privacy Practices^c	Assign agency official for privacy	Following	NMB has designated its Assistant Chief of Staff as its senior agency official for privacy.

**Appendix II: Extent to Which the National
Mediation Board (NMB) Is Following Key
Practices for Information Security and Privacy**

Practice	Extent NMB is following^a	Example of NMB's status
Establish policies and procedures for privacy protections	Minimally following	NMB does not have policies and procedures for privacy protections.
Privacy impact assessments ^d	Minimally following	NMB has not conducted a privacy impact assessment for its financial management systems, which contain personally identifiable information.
System of records notice ^e	Minimally following	NMB did not issue system of records notice for its financial management systems.

Source: GAO analysis of NMB documents and interviews with NMB officials. | GAO-16-240

Notes:

^aWe assessed whether NMB is following key practices (NMB is taking appropriate actions and has a formal plan, policy, or other document), partially following (is taking some actions but does not have a formal plan or policy and/or some additional steps must be taken to consider this practice implemented), or minimally following (NMB is taking little or no action to address this particular practice). For more information on our evaluation of NMB's information security and privacy practices in December 2013, see GAO, *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, [GAO-14-5](#) (Washington, D.C.: Dec. 3, 2014).

^bKey practices from the Federal Information Security Modernization Act of 2014 (FISMA 2014). Information security program and evaluation requirements for federal agencies were established by the Federal Information Security Management Act of 2002 (FISMA 2002). FISMA 2002 was largely superseded by FISMA 2014, which incorporates and continues the requirements of FISMA 2002 applicable to NMB.

^cKey practices from the Privacy Act of 1974, the E-Government Act of 2002, OMB guidance, and the National Institute of Standards and Technology Special Publication 800-53, Revision 4.

^dA privacy impact assessment is an analysis of how personal information is collected, stored, shared, and managed in a federal system.

^eA system of records is a collection of information about individuals under control of an agency from which information is retrieved by the name of an individual or other identifier. System of records notices are posted to agency websites to identify, among other things, the purpose of and individuals covered by information in a system of records, the category of records that are maintained about the individuals, and how the information is shared and routinely used by the agency.

Appendix III: Comments from the National Mediation Board



NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20005

202-692-5000

January 14, 2016

Cindy S. Brown Barnes, Director
Education, Workforce, and Income Security Issues
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Barnes:

This letter is provided in response to the Government Accountability Office draft report *GAO-16-240, National Mediation Board - Progress Made On Some GAO Recommendations to Strengthen Operations, But Key Controls Continue To Be Needed*, dated February, 2016.

The National Mediation Board appreciates the opportunity to provide comments before final publication of the report, and the efforts of GAO to conduct its congressionally mandated review. The Board will review and address the observations made by GAO and the one recommendation for executive action.

As a preliminary matter, it is important to note that many of the functions and matters that GAO makes findings and recommendations regarding involve services contracted out to other federal agencies. The Department of Interior and Bureau of Fiscal Services at the US Treasury Department provide human resources, procurement and financial management services to NMB. Part of the reason NMB uses those services is that those agencies have greater expertise and meet all the security requirements for federal systems. Among other things, this means that NMB has little personally identifiable information in its direct control and does not run its own procurements. It would in fact be a waste of resources for NMB to attempt to evaluate and audit DOI and BFS services when the agencies themselves also do that on a much broader scale.

Additional Actions Needed in Response to GAO's December 2013 Recommendations

Strategic Planning: Develop formal written policies and procedures governing its planning process.

As noted in the NMB 2014-2019 Strategic Plan, the format and method used to develop the plan was taken directly from guidance found in the Office of Management and Budget, Circular A-II, July, 2013, which establishes best practices for strategic planning. While the NMB has already been following those policies, the NMB will now use the Circular to formalize its internal policies to mirror those endorsed by OMB.

Performance Goals and Measures: Ensure performance goals meet all guidelines for federal performance management.

The NMB will consult with OMB and other government labor relations agencies (FMCS, FLRA, and NLRB) regarding possible changes to our measurement and tracking of qualitative goals.

Mechanism to Resolve Audit Findings/Recommendations: Expand the process to address all audits.

As demonstrated, the NMB has established policies and procedures for responding to financial audit findings. The NMB will also put in place a Standard Operating Procedure (SOP) for responding to audit findings of all other types. It should be noted that the NMB has received a completely unqualified financial audit, all issues related to external and internal audits have been cleared, and all program audit findings have been addressed. There are no outstanding issues related to audits of any kind.

Information Security Program: Develop and implement policies and procedures and assess third-party providers' compliance with security requirements.

The NMB will develop a SOP for reviewing security audits conducted by all third-party providers. The NMB's third-party providers are large federal agencies with their own mandate to conduct information security audits. The NMB is not positioned, organizationally or with regard to resources, to audit the internal programs of our third-party providers.

Cindy Brown Barnes
January 14, 2016

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Information Privacy Program: Assess impact on privacy and issue notices about personally identifiable information [PII] NMB uses and shares.

PII related to NMB employees, contractors, and parties is generally held by the NMB's third-party providers. As with information security, the NMB is not positioned to audit the PII practices of our third-party providers. The NMB can and will develop a SOP for reviewing PII audits conducted by all third-party providers, and the NMB will develop an internal policy for identifying and monitoring employee, contractor, and party PII gathered and held temporarily by the agency.

Rail Grievance and Arbitration Data: Collect data on all cases and analyze them.

The NMB has instituted a policy that allows for the collection of case data for all cases filed in the arbitration system.

Recommendation for Executive Action: We [GAO] recommend that the Chairman of the National Mediation Board develop and implement policies and processes to reflect the agency's current procurement environment.

The NMB Chairman and Board Members have directed the NMB Chief of Staff, as the appropriate administrative officer for the Board, to work with the Assistant Chief of Staff for Administration to develop the appropriate procurement policies and processes. As noted above, however, BFS provides procurement services for NMB currently so NMB policies and procedures will be largely subordinate to those of BFS.

General Comments:

Security continues to be a primary concern for the NMB and particularly for the Information and Communication Technology (ICT) program. During 2015, five security-related training sessions were held for all staff. Two dealt with personal security and were conducted by the Federal Protective Service. One training program was provided online through the Department of Defense. That training addressed information security and personal conduct. The final two training sessions addressed NMB systems specifically and covered basic ICT security on the NMB's cloud system and security issues related to the NMB's online records schedule. Finally, the NMB has begun work with the Bureau of Fiscal Services audit group to do a complete security and risk assessment of the NMB ICT programs.

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Cindy Brown Barnes
January 14, 2016

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developing the workforce plan was not documented adequately. The NMB used the standard guidance from OMB and OPM regarding development of the plan and GAO does not appear to disagree. While the NMB appreciates GAO's suggestion and will develop an internal written policy that mirrors the best practices from OMB and OPM's guidance, it is worth noting that the agency had already been following those requirements.

The Board is concerned that the GAO continues to assert that consultation with stakeholders is not adequately done during the agency's planning efforts, even though multiple notations are made in the GAO report to the effect that NMB stakeholders told GAO they had input and were satisfied that their input was heard by the agency. The Board specifically requested input from stakeholders multiple times in multiple venues for its planning initiatives, including posting the draft strategic plan on the NMB web site. It is unclear what additional methods might satisfy GAO's concerns about stakeholder consultation.

If you have any questions or if you require further discussion of any of the comments contained in this response, please have your staff contact the NMB Chief of Staff, Daniel Rainey, at rainey@nmb.gov or 202-692-5015.

Sincerely,



Nicholas Geale, Chairman
The National Mediation Board



Harry Hoglander, Member
The National Mediation Board



Linda Puchala, Member
The National Mediation Board

Cindy Brown Barnes
January 14, 2016

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Cindy Brown Barnes, (202) 512-7215, brownbarnesc@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Clarita Mrena (Assistant Director), Amy Anderson (analyst in charge), Benjamin L. Sponholtz, Shirley Abel, Marie Ahearn, James Rebbe, Shaunyce Wallace, and Candice Wright made significant contributions to this report. In addition, key support was provided by James Bennett, Rachael Chamberlin, Susan Chin, David Chrisinger, Larry Crosland, Karin Fangman, Maria Gaona, Gretta Goodwin, Christopher Jones, Julia Kennon, Jason Kirwan, Kathy Leslie, Benjamin Licht, Steven Lozano, Monica Perez-Nelson, and Walter Vance.

Appendix V: Accessible Data

Agency Comment Letter

Text of Appendix III: Comments from the National Mediation Board

Page 1

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20005

202-692-5000

January 14, 2016

Cindy S. Brown Barnes, Director

Education, Workforce, and Income Security Issues

Government Accountability Office

441 G Street, N.W.

Washington, DC 20548

Dear Ms. Barnes:

This letter is provided in response to the Government Accountability Office draft report GA0- 16- 240, National Mediation Board - Progress Made On Some GAO Recommendations to Strengthen Operations, But Key Controls Continue To Be Needed, dated February, 2016.

The National Mediation Board appreciates the opportunity to provide comments before final publication of the report, and the efforts of GAO to conduct its congressionally mandated review. The Board will review and address the observations made by GAO and the one recommendation for executive action.

As a preliminary matter, it is important to note that many of the functions and matters that GAO makes findings and recommendations regarding

involve services contracted out to other federal agencies. The Department of Interior and Bureau of Fiscal Services at the US Treasury Department provide human resources, procurement and financial management services to NMB. Part of the reason NMB uses those services is that those agencies have greater expertise and meet all the security requirements for federal systems. Among other things, this means that NMB has little personally identifiable information in its direct control and does not run its own procurements. It would in fact be a waste of resources for NMB to attempt to evaluate and audit DOI and BFS services when the agencies themselves also do that on a much broader scale.

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Additional Actions Needed in Response to GAO's December 2013 Recommendations

Strategic Planning: Develop formal written policies and procedures governing its planning process.

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Sincerely,

Nicholas Geale, Chairman

The National Mediation Board

Harry Hoglander, Member

The National Mediation Board

Linda Puchala, Member

National Mediation Board

Accessible Text

Accessible Text for Figure 1: Organization of the National Mediation Board

- Chairman and members of the board
 - Office of Legal Affairs
 - Office of the Chief of Staff
 - Office of Administration
 - Office of Mediation and Alternative Dispute Resolution
 - Office of Arbitration Services

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